

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1229 Contamination Notification
SPONSOR(S): General Government Policy Council, Kriseman and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 114

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	13 Y, 0 N	Blalock	Reese
2)	General Government Policy Council	16 Y, 0 N, As CS	Blalock	Hamby
3)	Natural Resources Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

The bill increases the contamination notification requirements for persons responsible for site rehabilitation by requiring a notice of contamination to be provided by the Department of Environmental Protection (DEP) to city and county government senior elected officials, U.S. Senators and Representatives from the affected area, and all real property owners, presidents and board members of any condominium association or sole owners of condominiums, lessees, and tenants of record of any properties within a 500-ft radius of each sampling point at which contamination is discovered. These additional notification requirements do not apply to contamination found due to petroleum cleanups administered by the DEP using the Inland Protection Trust Fund pursuant to s. 376.3071, F.S., dry cleaning facility restoration pursuant to s. 376.3078, F.S., or brownfield area cleanup pursuant to s. 376.81, F.S., and the DEP is required to recoup all costs associated with notification from the party responsible for the site rehabilitation. The bill also requires local governments, within 30 days after receiving the actual contamination notice, to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area.

The bill requires the DEP to verify that the person responsible for site rehabilitation has complied with the contamination notice requirements, and if it is determined that such person has not complied with the contamination notice requirements, then DEP can pursue enforcement as provided in current law.

The bill also requires the DEP to provide additional notice of property at which contamination has been discovered if it is the site of a school or child care facility.

The bill appears to have an insignificant fiscal impact on state and local governments (see fiscal impact sections below).

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2003, the Florida Legislature passed Committee Substitute for HB 1123, commonly referred to as Global RBCA, which was signed into law by Governor Bush on June 20, 2003. Global RBCA extended the use of risk-based corrective action to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists pursuant to other provisions of chapters 376 and 403, F.S.¹ Risk-based corrective action is not a new principle. It has been used for several years in Florida at contaminated sites under the supervision of specific Department of Environmental Protection (DEP) programs, namely: the Petroleum Program,² the Brownfield Program,³ and the Dry-cleaning Facility Restoration Program.⁴ Risk-based corrective action utilizes site-specific data, modeling results, risk assessment studies, institutional controls (i.e., a deed restriction limiting future use to industrial only), engineering controls (i.e., placing an impervious surface over contaminated soils to prevent human exposure), or any combination thereof, to develop a unique remediation strategy for the site that considers the intended use of the property and aims to protect human health and safety and the environment. Based upon this information, risk-based corrective action may incorporate engineering controls, institutional controls, or even alternative cleanup target levels, to achieve a "No Further Action" determination from the DEP.

Shortly after the statute became effective, the DEP commenced the rulemaking process to implement the provisions of Global RBCA. During the rulemaking process there was lengthy debate over the notice provisions that required owners of contaminated property, upon the discovery of contamination beyond their property boundaries, to notify neighboring property owners that pollutants had been discovered on or under their property.

The proposed rule developed for the first rulemaking workshop was published in August 2004 and dramatically increased then existing notice requirements. These new notice provisions were developed in response to criticism of the DEP's actions in certain high profile cases in which property owners had not been notified of the migration of contamination from neighboring sites onto their property.⁵

¹ Section 376.30701, F.S.

² Section 376.3071, F.S.

³ Section 376.81, F.S.

⁴ Section 376.3078, F.S.

⁵ Ralph A. DeMeo, Carl Eldred, Leslie A. Utiger, Lynn S. Scruggs. *Insuring Against Environmental Unknowns*, 23 *J. Land Use & Envtl. L.* 61 (Fall 2007), citing Deborah Alberto, *DEP Investigates Itself in Handling of Coronet*, Tampa Trib. (Sept. 24, 2003); Scott

Originally, the DEP proposed the requirement of verbal notice to affected property owners within three days of discovery of off-site migration of contaminants. Additionally, constructive notice was to be provided to residents and business tenants of any real property into which contamination migrated from the source property by publishing a “notice, at least 16 square inches in size, in a newspaper of general circulation in the area.”

The DEP eventually modified these proposed notice provisions to require written notice to the DEP within ten days of the confirmed discovery (i.e., laboratory analytical data) of contamination on property beyond the boundaries of the property that is the subject of site rehabilitation activities. The final rule, which became legally effective on April 17, 2005, also sets out the specific information that is to be included when providing such notice to the DEP.

In response to the events at the Tallevast facility, the legislature passed HB 937, which essentially mirrored the notification requirements in Global RBCA. Committee Substitute for HB 937, often referred to as the Tallevast Bill, was signed into law by Governor Bush on May 24, 2004. For the most part, this legislation codified the contamination notification requirements promulgated in chapter 62-780 of the Florida Administrative Code, by requiring those conducting site rehabilitation of contaminated property to notify potentially affected persons of the existence of contamination.⁶ Specifically, the statute provides that if at any time during site rehabilitation, conducted pursuant to specific provisions of chapter 376, F.S., the person responsible for site rehabilitation or his or her agent or representative discovers from laboratory analytical results that contamination as defined in applicable DEP rules exists in any medium beyond the boundary of the property at which site rehabilitation was initiated, the person responsible for site rehabilitation shall give actual notice no later than ten days from such discovery to the DEP Division of Waste Management in Tallahassee.⁷ A copy of the notice must also be simultaneously mailed to the applicable DEP District Office, County Health Department, and all known lessees or tenants of the source property.⁸

Within thirty days of receiving the actual notice (or if the DEP already possessed information equivalent to that required by the notice, within thirty days of the effective date of the legislation), the DEP must notify all owners of record of real property, except for owners of property where contamination was discovered and where site rehabilitation was initiated.⁹ This particular provision required the DEP to review all sites undergoing DEP supervised site remediation and identify all instances of actual contamination beyond the source property boundaries.

Effect of Bill

The bill amends s. 376.30702, F.S., to add that the contamination notification requirements in this section also apply to site rehabilitation conducted pursuant to an administrative or court order, and that the notification requirements in this section do not apply to de minimis discharges as defined in department rules.

The bill specifies that the contamination notification requirements in s. 376.30702, F.S., are triggered when the person responsible for the site rehabilitation, agent, or representative discovers that contamination exists in any “groundwater, surface water, and soil” beyond the boundaries of the property at which site rehabilitation was initiated, and which threatens a release of contamination beyond the boundaries of such property or poses a health risk to persons beyond the boundaries of such property.

The bill also requires the DEP to notify:

Carroll, *A Stormy End to Tallevast Talks*, Sarasota Herald-Trib. (Dec. 9, 2005); Scott Carroll, *Warrior Women with Community Support*, Sarasota Herald-Trib. (July 19, 2004); Editorial, *Coronet's Problems Were Kept Quiet for Far Too Long*, Tampa Trib. (Aug. 1, 2003).

⁶ Section 376.30702(2), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Section 376.30702(3), F.S.

- The mayor, the chair of the county commission, or the comparable senior elected official representing the affected area;
- The city manager, the county administrator, or the comparable senior elected official representing the affected area;
- The state senator and state representative representing the affected area, both United States Senators, and the United States Representatives; and
- All real property owners, presidents and board members of any condominium association or sole owners of condominiums, lessees, and tenants of record of the property at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation, and all real property owners, presidents and board members of any condominium associations or sole owners of condominiums, lessees, and tenants of record of any properties within a 500-foot radius of each sampling point at which contamination is discovered.

These additional notification requirements do not apply to contamination found due to petroleum cleanups administered by the DEP using the Inland Protection Trust Fund pursuant to s. 376.3071, F.S., dry cleaning facility restoration pursuant to s. 376.3078, F.S., or brownfield area cleanup pursuant to s. 376.81, F.S.

The bill amends the notice provisions in s. 376.30702(2), F.S., to require further that the notice include:

- A listing of all real property owners at which contamination has been discovered; and
- Separate tables for groundwater, soil, or surface water that list sampling locations identified on the vicinity map.

The bill requires that the notice provided to local government officials must be mailed by certified mail, return receipt requested, and must advise the local government of its responsibilities discussed below. Copies of the notices and receipts must be provided to the DEP as proof of compliance with the notice requirements.

The bill also provides that the notice provided to real property owners, presidents and board members of any condominium association or sole owners of condominiums, lessees, and tenants of record can be delivered by certified mail, hand delivery, or door-hanger.

The bill requires local governments, within 30 days after receiving the actual notice required in s. 376.30702(2), F.S., to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area.

The bill also requires the DEP, within 30 days after receiving the actual contamination notification, to verify that the person responsible for the site rehabilitation has complied with the notice requirements. If the person has not complied with the notice requirements, the DEP can pursue enforcement.

The bill also requires that if the property where contamination has been discovered is a private K-12 school or child care facility as defined in 402.302, F.S.,¹⁰ the DEP must mail a copy of the contamination notification to the governing board, principle, or owner of the school or child care facility and direct the governing board, principal, or owner to provide actual notice annually to teachers and parents or guardians of students or children attending the school or child care facility during the period of site rehabilitation.

¹⁰ Under 402.302, F.S., "Child care facility" includes any child care center or child care arrangement that provides child care for more than five children unrelated to the operator and that receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included: Public schools and nonpublic schools and their integral programs; Summer camps having children in full-time residence; Summer day camps; Bible schools normally conducted during vacation periods; and Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

The bill further provides that if any property within a 1-mile radius of the property at which contamination has been discovered is the site of a school as defined in s. 1003.01, F.S.,¹¹ the DEP must mail a copy of the notice to the superintendent of the school district in which the property is located and direct the superintendent to provide actual notice annually to the principal of the school. However, this notification does not apply to contamination found due to petroleum cleanups administered by the Department of Environmental Protection using the Inland Protection Trust Fund pursuant to s. 376.3071, F.S., dry cleaning facility restoration pursuant to s. 376.3078, F.S., or brownfield area cleanup pursuant to s. 376.81, F.S.

The bill requires the DEP to recover all costs associated with notification from the party responsible for the site rehabilitation.

B. SECTION DIRECTORY:

Section 1: Amends s. 376.30702, F.S., relating to contamination notification.

Section 2: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Environmental Protection (DEP), there will be manageable startup costs to establish procedures for identifying parcels that fall within a 500-foot radius of a contamination location and public schools within a 1-mile radius.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires local governments to mail a copy of any contamination notification that is received to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area. This appears to result in an insignificant fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to have a negative fiscal impact on the private sector by requiring the person responsible for site rehabilitation to reimburse the DEP for all costs associated with the additional contamination notification requirements established in the bill.

Private K-12 schools and child care facilities will incur increased costs to annually notify teachers and parents or guardians of students attending the school where contamination is discovered on their property.

D. FISCAL COMMENTS:

None.

¹¹ Under s. 1003.01, F.S., "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill requires local governments to mail a copy of any contamination notification that they receive to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area, and therefore, appears to require counties or municipalities to spend funds or take an action requiring the expenditure of funds. However, this requirement appears to have an insignificant fiscal impact on local governments and would be exempt from the mandate provision.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 93, it appears that this sentence should be revised to pertain to the DEP instead of "persons responsible for site rehabilitation" since the notice requirements in the subparagraph being referenced in this subparagraph are the responsibility of the DEP and not the "persons responsible for site rehabilitation."

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 31, 2009, the General Government Policy Council adopted one strike-all amendment to this bill. The strike-all amendment made the following revisions to the bill:

- Provides that the contamination notification requirements are triggered when the person responsible for the site rehabilitation discovers contamination in any groundwater, surface water, and soil beyond the boundaries of the property undergoing site rehabilitation, and which threatens a release of such contamination beyond the boundaries of such property or poses a health risk to persons beyond the boundaries of the property.
- Shifts the additional notification requirements back to the responsibility of the Department of Environmental Protection (DEP), yet, exempts DEP from these additional notification requirements where site-habilitation has commenced for petroleum cleanups administered by the DEP using the Inland Protection Trust Fund pursuant to s. 376.3071, F.S., dry cleaning facility restoration pursuant to s. 376.3078, F.S., or brownfield area cleanup pursuant to s. 376.81, F.S. The bill also requires person responsible for site rehabilitation to reimburse the DEP for all costs associated with the notification required under this statute.
- Provides that the notice requirements to schools within a 1 mile radius of contaminated property do not apply where site rehabilitation was initiated pursuant to ss. 376.30701, 376.3078, or 376.81, F.S.